

ESTTA Tracking number: **ESTTA358408**

Filing date: **07/16/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Times Three Clothier, Inc.
Granted to Date of previous extension	07/17/2010
Address	561 Seventh Avenue, 12th floor New York, NY 10018 UNITED STATES
Correspondence information	Nels T. Lippert, Esq. Wilmer Curler Pickering Hale and Dorr, LLP 399 Park Avenue New York, NY 10022 UNITED STATES WHIPNYTrademarkDocketStaff@wilmerhale.com , nels.lipper@wilmerhale.com Phone:212-937-7201

Applicant Information

Application No	77905299	Publication date	05/18/2010
Opposition Filing Date	07/16/2010	Opposition Period Ends	07/17/2010
Applicant	CROSSCARE LIMITED Broomhill Road, Tallaght, Dublin 24, IRELAND		

Goods/Services Affected by Opposition


Class 005.
All goods and services in the class are opposed, namely: Skin creams for medical use containing plant extracts enriched with vitamins


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3797563	Application Date	07/16/2008
Registration Date	06/01/2010	Foreign Priority Date	NONE
Word Mark	YUMMIE TUMMIE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2007/07/01 First Use In Commerce: 2007/10/15 Clothing, namely, dresses, shirts, dress shirts, t-shirts, tank tops, knit shirts, woven shirts, turtlenecks, lingerie, sleepwear, pants, blouses, hosiery, leggings and bodysuits

U.S. Registration No.	3449024	Application Date	10/18/2007
Registration Date	06/17/2008	Foreign Priority Date	NONE
Word Mark	YUMMIE TUMMIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2007/07/01 First Use In Commerce: 2007/10/15 Under garments		

Attachments	77979373#TMSN.jpeg (1 page)(bytes) 77307502#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (9 pages)(227229 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Nels T. Lippert/
Name	Nels T. Lippert, Esq.

Date	07/16/2010
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Trademark: YUMMY TUMMIES
Application Serial No. 77/905,299
Filing Date: January 5, 2010
Published in the Official Gazette on
May 18, 2010 at TM 356

TIMES THREE CLOTHIER, LLC)	
)	
)	
Opposer,)	NOTICE OF OPPOSITION
)	
v.)	
)	
CROSSCARE LIMITED)	
)	
Applicant.)	
)	

Opposer, Times Three Clothier, LLC (“Opposer”), believes that it will be damaged by the registration of the mark YUMMY TUMMIES as shown in the above-referenced trademark application and hereby opposes the same. As grounds for opposition, Opposer alleges that:

1. Opposer is a New York Limited Liability Company located and doing business at 561 Seventh Avenue, 12th Floor, New York, New York 10018 and is engaged in developing and marketing men’s and women’s clothing and apparel.
2. Upon information and belief, Applicant Crosscare Limited (“Applicant”) is an Irish Limited Company with an address of Broomhill Road, Tallaght, Dublin 24, Ireland.
3. Applicant is the owner of U.S. Trademark Application Serial No. 77/905,299 for the mark YUMMY TUMMIES (“Applicant’s Mark”), which was filed on January 5, 2010 and published on May 18, 2010.
4. Opposer filed a request to extend its time to oppose Applicant’s Mark, which request was granted through July 17, 2010.

5. Applicant filed the intent-to-use trademark application for the YUMMY TUMMIES mark in Class 5 for goods described as “skin creams for medical use containing plant extracts enriched with vitamins.”

6. Opposer owns U.S. Trademark Registration No. 3,797,563 for the mark YUMMIE TUMMIE in Class 25 for use in connection with “clothing, namely, dresses, shirts, dress shirts, t-shirts, tank tops, knit shirts, woven shirts, turtlenecks, lingerie, sleepwear, pants, blouses, hosiery, leggings and bodysuits.” A copy of U.S. Registration No. 3,797,563 is attached hereto as Exhibit A. Said registration is valid and subsisting and Opposer hereby gives notice in accordance with Trademark Rule of Practice 2.122(d)(2) that it will rely thereon as evidence in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Opposer’s testimony period.

7. Opposer also owns U.S. Trademark Registration No. 3,449,024 for the mark YUMMIE TUMMIE in Class 25 for use in connection with “under garments.” A copy of U.S. Registration No. 3,449,024 is attached hereto as Exhibit B. Said registration is valid and subsisting and Opposer hereby gives notice in accordance with Trademark Rule of Practice 2.122(d)(2) that it will rely thereon as evidence in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Opposer’s testimony period.

8. Opposer has continuously and exclusively used the YUMMIE TUMMIE mark in connection with its goods prior to Applicant’s constructive and/or actual first use date, if any, in United States commerce.

9. Opposer has distributed and offered for sale and sold consumer products bearing the trademark YUMMIE TUMMIE which identifies and distinguishes its consumer products from those of others.

10. Opposer has made use of the trademark YUMMIE TUMMIE by applying it to labeling, packaging, product literature and other materials distributed in interstate commerce.

11. As a result of the quality of Opposer's products and their widespread use in the relevant industry, the trademark YUMMIE TUMMIE is recognized and relied upon as identifying Opposer's goods and as distinguishing them from the goods of others, and have come to represent and symbolize valuable goodwill belonging exclusively to Opposer. Opposer has spent substantial time, effort and money promoting its goods under the YUMMIE TUMMIE mark.

12. Opposer's YUMMIE TUMMIE mark and Applicant's YUMMY TUMMIES mark are substantially similar in sound, appearance and commercial impression.

13. Applicant's use of the YUMMY TUMMIES mark is likely to cause confusion, mistake or deception with consequent injury to Opposer and the public. Use of such mark will likely lead to the mistaken belief that Applicant's product originates with, is affiliated with, or is sponsored or approved by Opposer.

14. If Applicant is granted a registration for the mark herein opposed, it would obtain, thereby, at least a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

15. Registration should be refused pursuant to Section 2(d) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1052(d), on the grounds that Applicant's YUMMY TUMMIES mark so resembles Opposer's YUMMIE TUMMIE mark as to cause confusion, mistake and/or deception, all to the damage of Opposer.

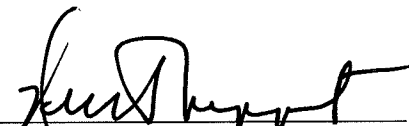
16. WHEREFORE, Opposer, by its undersigned attorneys, requests that its opposition to Application Serial No. 77/905,299 be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to Opposer that the Board finds to be necessary and just in the circumstances.

17. Opposer appoints as its attorneys in this proceeding Nels T. Lippert and Terese R. Cohen of the firm Wilmer Cutler Pickering Hale and Dorr, LLP 399 Park Avenue, New York, New York 10022, to whom all correspondence in this proceeding should be addressed.

DATED: July 17, 2010

Respectfully submitted,

WILMER CUTLER PICKERING
HALE AND DORR, LLP

By: 

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Attorneys for Opposer Times Three Clothiers, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the NOTICE OF OPPOSITION was served on Applicant and Applicant's Filing Correspondent by first class mail on July 17, 2010 as follows:

Crosscare Limited
Broomhill Road, Tallaght,
Dublin 24, Ireland

-AND-

Robert J. Kenney
P.O. Box 747
Falls Church, VA 22040-0747


Lizette Shea

EXHIBIT A

United States of America

United States Patent and Trademark Office

YUMMIE TUMMIE

Reg. No. 3,797,563

Registered June 1, 2010

Int. Cl.: 25

TRADEMARK

PRINCIPAL REGISTER

TIMES THREE CLOTHIER, LLC (NEW YORK LIMITED LIABILITY COMPANY)
561 SEVENTH AVENUE, 12TH FLOOR
NEW YORK, NY 10018

FOR: CLOTHING, NAMELY, DRESSES, SHIRTS, DRESS SHIRTS, T-SHIRTS, TANK TOPS, KNIT SHIRTS, WOVEN SHIRTS, TURTLENECKS, LINGERIE, SLEEPWEAR, PANTS, BLOUSES, HOSIERY, LEGGINGS AND BODYSUITS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 7-1-2007; IN COMMERCE 10-15-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,449,024.

SN 77-979,373, FILED 7-16-2008.

LAURIE MAYES, EXAMINING ATTORNEY



David J. Kyppas

Director of the United States Patent and Trademark Office

EXHIBIT B

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,449,024

Registered June 17, 2008

**TRADEMARK
PRINCIPAL REGISTER**

YUMMIE TUMMIE

**TIMES THREE CLOTHIER, LLC (NEW YORK
LTD LIAB CO)
SUITE 175
24500 CENTER RIDGE ROAD
WESTLAKE, OH 44145**

**THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.**

**FOR: UNDER GARMENTS, IN CLASS 25 (U.S.
CLS. 22 AND 39).**

SER. NO. 77-307,502, FILED 10-18-2007.

FIRST USE 7-1-2007; IN COMMERCE 10-15-2007.

AMY MCMENAMIN, EXAMINING ATTORNEY